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DEC 22 2006

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA

BY *[Signature]*

BEFORE A HEARING OFFICER

OF THE SUPREME COURT OF ARIZONA

**IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,**

No. 04-1782

**HEARING OFFICER'S
REPORT ON REMAND**

KIMBERLY L.S. PUGH,

Respondent.

"The road to hell is paved with good intentions," remains the theme of this unfortunate saga. Previously, and recognizing the fine line Respondent walked in concluding she did not have a conflict of interest, I determined that she did not have a conflict, and recommended the claims against her be dismissed.

The Disciplinary Commission disagreed, found there was a conflict of interest, and remanded this matter for "full discussion and analysis" of the relevant aggravating and mitigating factors, and "recommendation of an appropriate sanction."¹

In my previous report, on page 6, I penned the following footnote:

If I were to find a violation of ER 1.9, I would need to deal with aggravating and mitigating factors. The State Bar concedes (in fact, stipulated) there are no aggravating factors, and that the mitigating factors are absence of a disciplinary record, absence of a dishonest or selfish motive, cooperative attitude toward these proceedings (Respondent's response to the State Bar in December of 2004 was 6 single spaced pages, with 184 pages of exhibits!), and inexperience in the practice of law. Indeed, during the hearing, I inquired whether these mitigating factors (which I find to be mitigating) could reduce an informal reprimand down to a dismissal. Based on my conclusion, however, I do not need to reach this question.

It appears five Commission members wanted more than this.

¹ Three of the eight Commission members hearing the matter, while concurring in the majorities analysis and decision, did not think an aggravation/mitigating hearing was required. Instead, they would have imposed an informal reprimand based on the existing record.

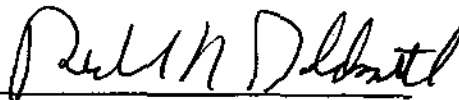
1 After remand, I held a conference call with the lawyers for the State Bar and
2 Respondent. They agreed that, were we to have a hearing, I would find no aggravating
3 factors and the mitigating factors stated in the footnote. Therefore, it was agreed I could
4 proceed based on the existing record, and the parties have filed briefs to help me decide. I
5 have also re-read the hearing transcript and my report, including this footnote on page 5:

6 Watching Respondent during her testimony, it was apparent to me
7 how sincerely she believed there was no conflict of interest, that she
8 was doing the right thing to protect the child, and that she took these
9 bar proceedings seriously. She was clenching and unclenching her
10 hands, and I thought she would destroy the handkerchief she was
11 holding.

12 My question then, and now, is whether it is appropriate in this case to reduce the
13 informal reprimand to something less. (Clearly, the mitigating factors reduce censure to an
14 informal reprimand). In Respondent's Memorandum RE Disclosure, Respondent has cited
15 numerous cases from other jurisdictions that I can. The State Bar disagrees – and
16 distinguishes the one Arizona case they found in footnote 2 on page 2 of its Response
17 Memorandum Regarding Sanctions.

18 I remain convinced that the public does not need protecting – and no helpful message
19 can be sent to others – in any formal discipline. Therefore, I recommend that Respondent
20 be diverted, required to take an ethics course, and, for example, write an article for the
21 Arizona Lawyer on the lessons she has learned in this matter.

22 DATED this 22nd day of December, 2006.

23 

24 Richard N. Goldsmith
25 Hearing Officer
26

1 ORIGINAL of the foregoing has been
2 filed this 27th day of December, 2006, with:

3 Discipline Clerk of the
4 Supreme Court of Arizona
5 Certification & Licensing Division
6 1501 West Washington, Suite 104
7 Phoenix, AZ 85007-3329

8 COPY of the foregoing e-mailed and
9 mailed this 22nd day of December, 2006, to:

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